

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF MISSOURI

3
4 THE UNITED STATES OF AMERICA,
5 Plaintiff,

6 vs. No. 4:09-CR-360 CDP

7 JAMES VERNON JOSEPH, JR.,
8 Defendant.

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10 PRESENT: The Honorable Catherine D. Perry, Presiding
11 ATTORNEY FOR PLAINTIFF: Howard J. Marcus, Assistant United
12 States Attorney
13 ATTORNEY FOR DEFENDANT: Joel J. Schwartz

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17 Sentencing Hearing

18 October 20, 2009

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Teri Hanold Hopwood, CSR, RMR, CRR
Thomas F. Eagleton Courthouse
111 South Tenth Street
St. Louis, MO 63102

1 THE COURT: We're here in the case of United States
2 of America versus James Vernon Joseph, Junior. This is case
3 number 4:09-CR-360. We are here for sentencing. Both parties
4 have filed statements of no objections, I believe, statements
5 that there were no objections. Is that correct?

6 MR. SCHWARTZ: Yes, Your Honor.

7 MR. MARCUS: Yes, ma'am.

8 THE COURT: Mr. Joseph, did you have a chance to go
9 over the Presentence Report and discuss it with your lawyer?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: Were there any objections that you
12 wanted him to make to that report that haven't been resolved?

13 THE DEFENDANT: No.

14 THE COURT: You need to answer out loud.

15 THE DEFENDANT: No, ma'am.

16 THE COURT: Then I will adopt the Presentence Report
17 as my findings of fact and my conclusions of law about the
18 advisory Sentencing Guidelines.

19 The Presentence Report concludes, as you all know, that
20 the defendant -- there is a total offense level of 12, and a
21 criminal history category of one, so that the recommendations
22 of the Sentencing Guidelines, advisory Guidelines range is 10
23 to 16 months.

24 I also want to note that I did receive some letters from
25 defense counsel, and I have reviewed those and will place them

1 under seal in the court file so the record of the sentencing
2 will be complete.

3 So, with that said, Mr. Schwartz, I'll ask you to make
4 any statements on your client's behalf that you would like to.

5 MR. SCHWARTZ: Thank you, Your Honor. Mr. Joseph is
6 45 years old, a criminal history Category 1. He has had things
7 somewhat difficult. He has managed to do relatively well. He
8 raised a daughter by herself -- by himself, who is now doing
9 well, actually moved since the PSI was done, and now working in
10 Alaska on a crabbing boat, I guess it's called, and her goal is
11 to move back to Sacramento and buy a home there. He also has
12 three other children, a six-year old and two almost two-year
13 old twins.

14 He has been doing what he can do to make money. He is
15 very accomplished in the entertainment and party industry,
16 where he throws all sorts of parties and entertainment, and the
17 Government actually has much of his photographic equipment
18 which they have agreed to give back absent anything that was
19 used in the commission of this particular case.

20 What I'm leading up to is his family is having a very
21 difficult time. He has been locked up since this occurred.

22 The minimum that the Court can impose under the
23 Guidelines is a ten-month sentence, but within the zone it is
24 in, the Court does have the option of splitting that sentence.
25 As fate would seem to have it, he has been locked up since

1 May 18th, which is just over five months. As a practical
2 matter, if the Court were to impose a sentence other than a
3 split sentence, and he was to go back to California or wherever
4 the Court chose to recommend, it would probably take a couple
5 months to get him out of here to Oklahoma, and another month or
6 two to get him out of Oklahoma to get him where he's going.

7 I would ask the Court to give him the minimum and
8 splitting the sentence, give him the five months that he has
9 previously done, and imposing the rest of the sentence in
10 either home detention or community confinement in California.
11 It would seem to satisfy just punishment, as well as satisfy
12 the practical nature of what may end up happening in this case,
13 depending on the Court's ideas as far as sentencing goes.

14 With that said, I believe Mr. Joseph has something he
15 wants to say to the Court.

16 THE COURT: Mr. Joseph, it is your right to make any
17 statements you wish at this time.

18 THE DEFENDANT: I want to first, Your Honor,
19 apologize. I'm a little emotional because of my kids, really,
20 but I want to apologize for my actions. I'm not generally a
21 person that goes about this type of thing, as you can see from
22 my PSI report, but I do understand that's what I've done, and I
23 want to apologize for that, and regardless of whatever your
24 sentencing will be, when I do get home, you won't have nothing
25 to worry about, even as much as a traffic ticket from me,

1 because the hardest part of this for me being incarcerated, I
2 don't have any problem with that, I can handle myself, I'm
3 obviously a big guy, but I raised my daughter, and my kids mean
4 everything to me, and I should have thought about that before,
5 and I understand that a lot of times in life we wish we could
6 push a rewind button sometimes and make different decisions,
7 but unfortunately I'm in this situation, and I understand
8 what's going on where that's concerned, but I just want to say
9 that I often talk to friends, I'm the type of person if I can
10 get advice to help someone, I have common sense that everyone
11 knows me by, and in life, it's very interesting, we don't
12 understand what our most valuable asset is, and our most
13 valuable asset is not the money or the things we have, it's our
14 time, because we could lose those things and get them back, we
15 can never get our time back.

16 I missed things with my son and my daughters that I
17 would never miss. I don't care if my legs were broken, I have
18 arms to make it, I would crawl on my tummy to get there because
19 that's how I feel about that, so that's all I wanted to say,
20 and I apologize for my actions, and as I say, once it's done,
21 I'm done. I'm done. I'm done. Thank you.

22 THE COURT: Mr. Marcus, do you wish to make any
23 statements?

24 MR. MARCUS: Your Honor, the only thing I would like
25 to add, the guidelines are appropriate, the 10 to 16-month

1 range. I don't think the split is appropriate in this range.
2 On its face it is a zero dollars ID fraud, but from the
3 relevant conduct, it's much more than that, and I don't think
4 that his conduct merits that break.

5 THE COURT: Yeah, I mean, I'm concerned, and I'm
6 concerned because of the facts of the case, and I'm concerned
7 that being in the entertainment business is just another way of
8 saying he's a pimp, which is what the conduct looks like, and I
9 don't know if that's true or not. I know all he pleaded guilty
10 to was false IDs, but he did admit to the conduct involved in
11 this case, and he could have been charged with different
12 crimes, obviously, than he was. That's the decision that the
13 prosecutor makes, but it doesn't look to me like you're the
14 normal person with no criminal history. I sort of didn't give
15 you a chance to respond.

16 MR. SCHWARTZ: I understand exactly how things look,
17 and being in the entertainment industry is what led him to
18 this. He is in the entertainment industry, and the pictures
19 that the Government has would bear that out. I don't think
20 there is a discrepancy there.

21 The Court is 100 percent correct, too, it's what took
22 him over the edge. It was that temptation, and by being and
23 putting himself in that position, being in the industry that he
24 was in, which was also part of the adult entertainment
25 industry, there was the adult entertainment industry and the

1 other, it's not illegitimate, but the legitimate entertainment
2 industry. That took it to the different level here. It's not
3 that he's gone around being a pimp around the country and
4 promoting this. These girls came to him and taking
5 photographs, and then things kind of led to the situation as to
6 where it was.

7 THE COURT: So your twins are girls? Are your twins
8 girls?

9 THE DEFENDANT: Yes.

10 THE COURT: You raised one daughter?

11 THE DEFENDANT: Yes.

12 THE COURT: And yet still you could be involved in
13 the prostitution business. It's shocking to me. Think about
14 your daughters. I know Mr. Schwartz isn't saying that you got
15 these women into this business, but I cannot imagine a father
16 thinking it's okay for any woman to make a living in the way
17 these women were making a living with your -- and that you were
18 involved in it. But that's not -- I'm going to sentence you to
19 ten months in jail. That is the bottom of the guidelines,
20 except I could give you the split sentence, so it's not really
21 the lowest. I could give you the sentence that Mr. Schwartz
22 asks for, but I consider this crime very serious.

23 The relevant conduct you admitted to is very serious.
24 The use of all these false IDs is obviously a serious crime,
25 and the thing with the false IDs, you know, they weren't being

1 used for legitimate purposes. Whatever the purposes they were
2 being used for, I don't obviously really know, but I haven't
3 seen -- I just think that a serious sentence is important in
4 this case to reflect the seriousness of this crime.

5 Yes, you do not have prior convictions except for one
6 many years ago. It sounds like you have been a good father,
7 certainly raising your daughter, I got the letter from your
8 wife, or your -- the mother of your children who says you are a
9 very good father to those children, you're a very good father
10 apparently to your grown child. I read the letter from your
11 mother, and it sounds like you have done that. You seem to
12 have done it without getting involved in drugs or alcohol,
13 that's also very admirable, but when you look at all of the
14 factors, the seriousness of this crime, and the need to provide
15 punishment and deterrence, and to make sure that you do what
16 you're saying -- you sound very sincere right now, and you're
17 saying all of the right things, but I think it is essential
18 that you seriously understand the seriousness of this conduct,
19 and make sure that this does not happen again, as you say you
20 intend.

21 For the reasons I stated, it is the judgment of the
22 Court that the defendant is hereby committed to the custody of
23 the Bureau of Prisons, to be imprisoned for a term of ten
24 months.

25 Upon release from imprisonment, you will be placed on

1 supervised release for a term of two years.

2 Within 72 hours of release, you must report in person to
3 the probation office in the district to which you are released.
4 While on supervision, you must comply with the standard
5 conditions that have been adopted by the Court, and with the
6 following additional conditions.

7 You must refrain from any unlawful use of a controlled
8 substance, and submit to a drug test within 15 days of
9 beginning supervision, and at least two drug tests thereafter.

10 If you do not obtain a GED while in the Bureau of
11 Prisons custody, you must participate in GED classes as
12 approved by the Probation Office. Those will be the conditions
13 of supervised release, and as well as of course the standard
14 conditions that apply in this district.

15 I do find that the defendant does not have the ability
16 to pay a fine, and therefore no fine is imposed. It is
17 ordered, however, that the defendant must pay to the United
18 States a special assessment of \$100, and that is due
19 immediately. This will be the sentence in the case.

20 As part of your plea agreement, Mr. Joseph, you did
21 waive your right to appeal this sentence so long as I followed
22 your recommendations, and I have done so and sentenced you
23 within the guideline range, which I have done, so I believe you
24 have given up your right to appeal. If for some reason you
25 think you have a right or reason to appeal, any appeal would

1 have to be filed within ten days. So this will be the
2 sentence.

3 Do you wish me to make any recommendations, or do you
4 believe -- the time is so short that by the time there is a
5 designation and transport, I don't know how much time is left.

6 MR. SCHWARTZ: I agree with the Court, however, if
7 the Court would make a recommendation that if he actually gets
8 to an institution, I would ask the Court recommend an
9 institution near his significant other, which is in Hayward,
10 California.

11 THE COURT: Which is Los Angeles?

12 THE DEFENDANT: No, northern California.

13 THE COURT: I would recommend that the Bureau of
14 Prisons house you as close to the Hayward, California area as
15 meets their regulations, and that is only a recommendation, but
16 they usually do try to follow it.

17 The defendant is remanded to the custody of the marshals
18 for imposition of sentence, and court is in recess.

19 (A recess was taken.)

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1 REPORTER'S CERTIFICATE

2 I, TERI HANOLD HOPWOOD, RMR, CRR, Official Court
3 Reporter for the United States District Court for the Eastern
4 District of Missouri do hereby certify that the foregoing is a
5 true and correct transcript of the proceedings had in this
6 cause as same appears from my stenotype notes made personally
7 during the progress of said proceedings.

8

9 /S/ Teri Hanold Hopwood, RMR, CRR

10 TERI HANOLD HOPWOOD, RMR, CRR

11 Official Court Reporter

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